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CONTRACTS OF MARRIED WOMEN.

Editor Virginia Law Register :

A married woman, without separate estate, and not a sole trader, seems to be as completely under disability to contract, sue and be sued, as if chapter 103 of the Code had never been enacted. Not a syllable appears in the entire chapter, purporting to enlarge her capacity to contract, sue and be sued, that does not exclusively apply to a separate trader or the owner of a separate estate under this chapter.

Section 2288 authorizes a married woman, who is not a trader, to contract only "in respect to . . . her said separate estate, or upon the faith and credit thereof; and" (only) "upon such contracts . . . relating to, or affecting such . . . separate estate, she may sue and be sued."

Section 2295 limits section 2288 by designating what particular estate she may bind or contract with reference to. By the latter section she is permitted to contract, sue and be sued, with reference to all matters touching her said estate, which is made her separate under this chapter, as if she were unmarried. Section 2295 declares expressly that all such contracts shall be deemed to have been made with reference to, not only her said separate estate under this chapter, but also with reference to her equitable separate estate, if any she has.

It follows, therefore, agreeable to the old maxim, *Expressio unius alterius est exclusio*, if she possesses no such separate estate, she could make no contract with reference thereto, or upon the faith and credit thereof; and her efforts to do so would be unauthorized and void, and could not be the foundation of any suit, by or against her, under this chapter.

Not being authorized to charge her person, she can only charge her estate, in possession, with her contracts; would not, therefore, the value of the estate which she is allowed to charge, fix the extent of her liability upon her contracts? This proposition would hardly be denied by any but for section 2289, which presents some difficulties. It appears to direct that a personal judgment or decree may be entered upon a contract which is not personal, in the sense of binding the person. It provides for the rendition of personal judgments or decrees upon such contracts as she is authorized by section 2288 to make; which judgments or decrees may be enforced against her, and any separate estate she may have or subsequently acquire.

Unquestionably, the legislature may relieve a married woman of all legal disabilities imposed by the common law, and authorize her to make any manner of contracts, sue and be sued as if she were unmarried. But can the legislature or the courts give life to a contract which she is not first personally authorized to make? If she be not expressly authorized by statute to bind her person or her future estate, directly, could any act of the legislature or the court afterward so change its character as to give it an effect which she, herself, could not have done directly?

But does section 2299 change the nature or character of the contract which she is authorized to make by sections 2288, 2295, so as to bind her person, or so enlarge them as to enable her to create present liability on the faith of future acquisitions? Are not her contracts still in the nature of liabilities *in rem* and not *in personam*, the extent of which must still be measured by the value of her estate

in possession at the time they are made, and upon which she could only have obtained the credit?

Then, if section 2289 only authorizes judgments and decrees to be entered upon such contracts as married women are under section 2288 enabled to make, based upon separate estate acquired under chapter 103 of the Code, does it not necessarily follow that the amount of the judgment or decree must not exceed the value of the estate which she is by section 2295 allowed to contract with reference to, or obtain credit upon the faith of?

Then, we conclude that, if a married woman is possessed of no estate, made her separate estate by chapter 103 of the Code, she could make no legal contract which could be enforced by a court of law. If she does own such separate estate to the value of \$1,000, she may contract upon the faith and credit thereof, and may endorse her husband's note for \$5,000, but as she could only charge her said estate by her endorsement, the holder of the note could only take a judgment thereon for \$1,000, the value of the estate upon the faith of which she made the endorsement or obtained the credit. This judgment for \$1,000 could thereafter be enforced against her or any separate estate she has, or may subsequently acquire.

Respectfully,

Bristol, Va.-Tenn.

J. S. ASHWORTH.

SCIRE FACIAS—STATUTE OF LIMITATIONS.

Editor Virginia Law Register :

In the December (1898) number of your most valuable journal (p. 512) commenting upon *Fadeley's Adm'r v. Williams' Adm'r*, in which our Supreme Court held that the stay law (Va. Code, sec. 3577) "only applies to writs of *feri facias*," and not to writs of *scire facias*, you very justly say, "But it seems to us that the court had already ruled otherwise in *James v. Life*, 92 Va. 702," and conclude, "The two cases would seem inconsistent. The late case construes the saving clause of section 3577 literally, and confines it to writ *feri facias*; the earlier extends it to suits in equity to revive and enforce judgments upon which no *feri facias* can be issued."

I was counsel for Mrs. James in *James v. Life*, and beg the privilege of presenting to the profession so much of my printed note in that appeal as raised this question, which will accentuate the inconsistency of the two decisions. I concur with you in saying they seem to be irreconcilable. The extract from my note in *James v. Life* on this point is as follows:

"Does Section 3577 Apply?"

"This section provides limitations of proceedings to enforce a judgment and mentions executions, *scire facias*, etc., and extends the operation of the stay law from January 1, 1869, to March 29, 1871, specifically and exclusively to writs of *feri facias*. Under section 2919, which is applicable to all civil rights and remedies, the period from March 2, 1866, to January 1, 1869, was excluded, but this had no effect because this judgment was not recovered until June 3, 1870. Now by section 3577 as to the right to issue a writ of *feri facias* upon this judgment it was expressly provided that the period up to March 29, 1871, was also to be excluded. But this does not apply to a suit in equity; nor to a *scire facias*. When Dr. James died on August 14, 1889, the right to a *feri facias* died with him until and except